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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 MOLI PASIA,

Case No. 2:21-cv-00550-GMN-VCF

10 Petitioner,

ORDER

11 v.

12 ATTORNEY GENERAL OF THE U.S., et  
al.,

13 Respondents.  
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15 Moli Pasia has submitted a *pro se* habeas corpus petition under 28 U.S.C. §  
16 2241 challenging his continued detention by U.S. Immigration and Customs pending  
17 enforcement of his final order of removal. On June 16, 2021, Pasia responded to this  
18 court's order to show cause and file such proof he may have to demonstrate that his  
19 petition should not be dismissed without prejudice for failure to exhaust administrative  
remedies (ECF Nos. 5, 6).

20 As the court previously noted, the Immigration and Nationality Act ("INA"), 8  
21 U.S.C. § 1101 *et seq.*, provides a "complex statutory framework of detention authority,"  
22 codified at 8 U.S.C. §§ 1226 and 1231. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057  
23 (9th Cir. 2008). Where a non-citizen falls within the statutory scheme "can affect  
24 whether his detention is mandatory or discretionary, as well as the kind of review  
25 process available to him if he wishes to contest the necessity of his detention." *Id.* In  
26 general, § 1226(a) governs detention during the pendency of a non-citizen's removal  
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1 proceedings, and § 1231(a)(6) governs detention following the issuance of a final  
2 removal order.

3 The Ninth Circuit has held that that the government may not detain a non-citizen  
4 “for a prolonged period without providing him a neutral forum in which to contest the  
5 necessity of his continued detention.” *Casas-Castrillon v. DHS*, 535 F.3d 942, 949 (9th  
6 Cir. 2008) (establishing so-called “Casas hearings”). The Ninth Circuit extended *Casas-*  
7 *Castrillon* to detainees with final removal orders in *Diouf v. Napolitano (Diouf II)*, 634  
8 F.3d 1081 (9th Cir. 2011), holding that prolonged detention under § 1231(a)(6) is  
9 prohibited without an individualized hearing to determine whether the person is a flight  
10 risk or a danger to the community. Because prolonged detention without a hearing  
11 presents serious due process concerns, and the statute did not plainly authorize such  
12 detention, the court construed § 1231(a)(6) to require a custody hearing before an  
13 immigration judge where detention has lasted six months.<sup>1</sup> *Diouf II*, 634 F.3d at 1086.  
14 The Ninth Circuit recently reaffirmed that, under § 1231(a)(6), the government is  
15 required to show by clear and convincing evidence that detention is necessary to  
16 prevent flight and danger. *Flores Tejada v. Godfrey*, 954 F.3d 1245, 1249 (9th Cir.  
17 2020).

18 If noncitizens who are held in custody under 8 U.S.C. § 1231(a)(6) are  
19 dissatisfied with the Immigration Judge’s (IJ) bond determination, they may file an  
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21 <sup>1</sup> Immigration regulations indicate that an IJ loses jurisdiction to redetermine bond when  
22 an order of removal becomes administratively final. See 8 C.F.R. § 1236.1(d). However, the  
23 Ninth Circuit confirmed in *Diouf II* that immigration judges have jurisdiction to conduct bond  
24 hearings when a § 1231(a)(6) detainee has been detained for over six months. *Diouf II*, 634  
25 F.3d at 1091 (“The regulations do not afford adequate procedural safeguards because they do  
26 not provide for an in-person hearing, they place the burden on the alien rather than the  
27 government and they do not provide for a decision by a neutral arbiter such as an immigration  
28 judge.”) (citing *Casas-Castrillon*, 535 F.3d at 951–52); see also *Zadvydass v. Davis*, 533 U.S.  
678, 692 (2001) (holding that indefinite detention under § 1231(a)(6) raised serious  
constitutional concerns, in part because “the sole procedural protections available to the alien  
are found in administrative proceedings, where the alien bears the burden of proving he is not  
dangerous”).

1 administrative appeal so that “the necessity of detention can be reviewed by . . . the  
2 [Board of Immigration Appeals] (BIA).” *Prieto–Romero v. Clark*, 534 F.3d 1053, 1059  
3 (9th Cir. 2008). If they remain dissatisfied, they may file a petition for habeas corpus in  
4 the district court. *See, e.g., Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011)  
5 (petitioner “pursued habeas review of the IJ’s adverse bond determination before  
6 appealing to the BIA. This short cut was improper. Leonardo should have exhausted  
7 administrative remedies by appealing to the BIA before asking the federal district court  
8 to review the IJ’s decision”); *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014)  
9 (issue exhaustion is a jurisdictional requirement); *Sola v. Holder*, 720 F.3d 1134, 1135–  
10 36 (9th Cir. 2013) (declining to address a due process argument that was not raised  
11 below, which could have been addressed by the agency); *Singh v. Holder*, 638 F.3d  
12 1196, 1200–03 (9th Cir. 2011); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no  
13 jurisdiction to review legal claims not presented in the petitioner’s administrative  
14 proceedings before the BIA).

15 Here, Pasia states that an IJ ordered him removed to Samoa in December 2020,  
16 and he did not appeal the decision (ECF No. 1-1, p. 1). He seeks to be released on  
17 supervision. He states that ICE reviewed his detention on March 4, 2021. He now  
18 clarifies that he recently filed a motion for custody redetermination with the immigration  
19 court in Las Vegas (ECF No. 6, p. 1). The outcome of his motion may render his petition  
20 moot. Accordingly, the petition is dismissed without prejudice as unexhausted.

21 **IT IS THEREFORE ORDERED** that the Clerk DETACH and FILE the petition  
22 (ECF No. 1-1).

23 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** without prejudice as  
24 unexhausted.

25 **IT IS FURTHER ORDERED** that a certificate of appealability is denied.  
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**IT IS FURTHER ORDERED** that the Clerk send to petitioner 1 copy of the papers he filed in this action.

**IT IS FURTHER ORDERED** that the Clerk enter judgment accordingly and close this case.

DATED: 1 July 2021.

  
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GLORIA M. NAVARRO  
UNITED STATES DISTRICT JUDGE